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February 27, 2019

**VIA ECF**

Honorable Michael A. Shipp, U.S.D.J.  
United States District Court for the District of New Jersey  
Clarkson S. Fisher Federal Building & U.S. Courthouse  
402 East State Street  
Trenton, New Jersey 08608

**Re: *NewMarket Pharmaceuticals, LLC v. VetPharm, Inc. et al.***  
**Civil Action No. 3:17-cv-01852-MAS-TJB**

Dear Judge Shipp:

We write in response to the Court's February 19, 2019 Text Order and to inform the Court of several significant developments.

First, it appears that an arbitration is untenable as neither party is able to pay arbitration fees. While the AAA granted NewMarket's request for a waiver of the administrative portion of the fees associated with the new arbitration, (see Exhibit A), VetPharm has informed NewMarket that it too will seek a waiver of all fees. As a practical matter, according to the AAA case manager, even if the AAA would accept such a case, it is unlikely that any prospective arbitrator would be willing to proceed if both parties are unable or unwilling to pay any arbitrator fees.

In order to resolve this issue, NewMarket has proposed to VetPharm that the parties consent to resolve their dispute in front of Judge Bongiovanni as previously discussed at the mediation. VetPharm's only objection appears to be that it is unsure as to whether Judge Bongiovanni has the requisite knowledge in pharmaceutical product development, clinical trial management, clinical research organizations, FDA regulations, and electronic data capture. NewMarket believes this objection is meritless given the Court's experience, indeed expertise, in such matters.

Finally, VetPharm recently revealed that due to its financial struggles, the integrity of the data may become impaired and (b) VetPharm has been attempting to sell or otherwise monetize the data without informing NewMarket. Both revelations are directly contrary to prior representations VetPharm has made to this Court, (see March 22, 2017 Tr. at 10:21-23 ("We're not going to monetize it.") and 10:1-7 ("VetPharm isn't going to be destroying or disposing of any data"), and are the very reasons NewMarket twice sought temporary relief.

In light of the above, we respectfully request that the Court keep this case active on its docket and that a teleconference be scheduled before Judge Bongiovanni to discuss these matters further. We thank the Court for its continued attention to this matter, and are available should Your Honor or Your Honor's staff require anything further or have any questions.

Honorable Michael A. Shipp, U.S.D.J.

February 27, 2019

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Respectfully submitted,

*s/Joel A. Pisano*

Joel A. Pisano

Attachment

cc: Honorable Tonianne J. Bongiovanni, U.S.M.J. (via ECF)  
All Counsel of Record (via ECF and E-mail)

# **EXHIBIT A**

**Pollaro, Robert**

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**From:** AAA Fee Waivers <AAAFeeWaivers@adr.org>  
**Sent:** Wednesday, February 13, 2019 12:16 PM  
**To:** Pollaro, Robert; AAA Fee Waivers  
**Subject:** RE: Fee Waiver - Case No. 01-19-0000-4735

Mr. Pollaro,

After reviewing the submission for the waiver of the your client's AAA fees on case # 011900004735, the AAA has determined to grant the request for a hardship waiver of the AAA fees that your client is responsible for in this matter. Please keep in mind this only pertains to the filing fee and does not affect any obligation to pay arbitrator compensation.

This decision will be communicated with our Intake department in order for the case filing to proceed.

Thank you



**AAA Fee Waivers**

American Arbitration Association

E: [AAAFeeWaivers@adr.org](mailto:AAAFeeWaivers@adr.org)

[adr.org](http://adr.org) | [icdr.org](http://icdr.org) | [aaamediation.org](http://aaamediation.org)

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**From:** Pollaro, Robert <Robert.Pollaro@cwt.com>  
**Sent:** Tuesday, February 12, 2019 1:41 PM  
**To:** AAA Fee Waivers <AAAFeeWaivers@adr.org>  
**Subject:** Fee Waiver - Case No. 01-19-0000-4735

**\*\*\* External E-Mail – Use Caution \*\*\***

AAA,

NewMarket Pharmaceuticals, LLC ("NewMarket") respectfully submits the attached Affidavit in Support of Administrative Fees Hardship Wavier in connection with Case No. 01-19-0000-4735 filed by NewMarket against VetPharm, Inc. ("VetPharm")(collectively the "Parties"). In addition to the information provided in the Affidavit NewMarket provides the following background information that may assist the AAA in deciding NewMarket's request for a fee waiver.

This case (Case No. 01-19-0000-4735) is being filed because the District Court for the District of New Jersey issued an order (Case No. 3:17-cv-01852) requiring the Parties submit to arbitration by today, February 12, 2019. *See*, Order requiring arbitration (attached hereto). NewMarket was forced to file the present arbitration because VetPharm refused to do so. NewMarket is requesting a waiver of all fees because it is insolvent and has filed an action in the State Court of New Jersey to dissolve. *See*, MER-C-1-19 (attached hereto).

The AAA is encouraged to contact the undersigned counsel in the event it requires additional information or clarification.

Regards,

Robert Pollaro  
Counsel for NewMarket Pharmaceuticals, LLC

**Robert Pollaro**

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